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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the International Organization for the Development of Freedom of Education, a non-governmental organization in special consultative status*

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

1. The second report by Ms. Katarina Tomasevski on the right to education will be submitted to the Commission on Human Rights at its present session.

2. Deeply concerned as we have been by the slow development of the right to education until quite recently, we welcome the interest it has aroused in the last few years in the Commission, the Sub-Commission on the Promotion and Protection of Human Rights and the Committee on Economic, Social and Cultural Rights.

3. At its November-December 1999 session, the Committee considered and adopted a general comment on article 13 of the International Covenant on Economic, Social and Cultural Rights. The comment was drafted by Mr. P. Hunt, and the work was of high quality. We have repeatedly had occasion, both in writing and orally, to commend the work accomplished and we are convinced that the document adopted by the Committee on Economic, Social and Cultural Rights will be a landmark in the history of the right to education.

4. However, despite our positive appreciation of the text adopted, we consider that the question of freedom of education has not been dealt with in sufficient depth.

5. The two reports on the right to education adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 1998 and 1999[1] explicitly underscore the cross-sectoral nature of the right to education, which is a "right of access to a service" but also a "freedom-right". This cross-sectoral nature does not appear to us to have been adequately taken into account in the report adopted on 29 November 1999 by the Committee on Economic, Social and Cultural Rights.

6. During the discussion on 29 November, we took the floor to request the Committee to explore new avenues concerning the freedom aspect. We proposed some specific amendments to the text under consideration. Unfortunately, we noted, particularly during the discussion of our proposals, that freedom of education as formulated in article 13 of the Covenant still gave rise to some fears. We believe that the refusal to accept those proposals, reasonable and responsible though they were, has meant that the document adopted by the Committee on Economic, Social and Cultural Rights constitutes no significant progress in thinking on the issue that concerns us.

7. Our Organization, which has been working with human rights bodies for over 10 years, attaches great importance to the issue of freedom, as we have frequently reiterated in the many statements we have made, especially in the Commission on Human Rights.

8. We have always stood up for freedom of education in the spirit of human rights, that is to say by emphasizing the need to make those involved in education, such as parents and teachers, more aware of their responsibilities.

9. Our conception of freedom of education is midway between a purely State-run education approach and one that would endorse a dismantling of educational systems or an irresponsible withdrawal of the public authorities. We are vigorously opposed to both of these extremes and regret that our concern for freedom is constantly interpreted as a call for the promotion of private

Seducation to the detriment of the responsibility of the public authorities. On the contrary, we take the view that the public authorities have a crucial role to play in promoting the right to education, but that such a role must not stand in the way of the parents' right to choose their children's education, a right to which they are specifically entitled under the international instruments.

10. Obviously, no one denies the principle of such freedom. But the refusal to recognize that States are under an obligation to finance the exercise of such freedom has the effect of rendering such statements of principle utterly meaningless. Worse still, such refusal constitutes blatant discrimination within the human rights system itself, in particular when the choice of a school other than a state school results in often insurmountable financial constraints.

11. The first report submitted to the Commission by Ms. Tomasewski[2] states that the right to education presupposes that the education provided is, among its other characteristics, "acceptable" and "adaptable". These two criteria, which are also included in the general comment on article 13, clearly show that the right to education is not just a right of access to education, but means that the type of education proposed must be acceptable, in particular to the parents and the pupils themselves, and that it should also be organized in such a way that it is able to adapt to the various and changing needs of society.

12. The "acceptability" of education means that the education provided must be able to accommodate the parents' diversity of religious, philosophical and educational opinions, which can only come about if there is a wide variety of schools operating with their own, explicitly formulated, characteristics within an overall framework of responsibility and equity established and overseen by the State. This, in our view, is what genuine freedom of education is about. Consequently, the right to education is respected only if there is a wide variety in the educational services offered and if a choice between the various types of education on offer can effectively be exercised without discrimination of any kind.

13. The "adaptability" of education means that education must no longer be controlled by a single administration, imposing a single curriculum and method. Only a system of responsible freedom can implement an educational policy adapted to actual needs. Only a flexible and lively educational structure can meet this need for adaptability.

14. The obligations assigned to the State in the educational sphere are therefore obligations to produce results. The State must take the necessary steps to respect, protect and promote the right to education, but that does not mean that it has to be the only provider of education. On the contrary, we believe it is essential that international standards incorporate the obligation for States to guarantee fair and equitable access by all children to publicly provided financial resources for education.

15. As we have already pointed out, there can be no effective exercise of a freedom without the financial means of exercising it. Public international law has in fact evolved considerably in that regard. There are, for example, the major decision taken by the French Constitutional Council on 23 November 1977[3] and Decisions 5/1981 and 77/1985 of the Spanish Constitutional Court.[4] In all these instruments, it is affirmed that freedom of education is part of freedom of

conscience and that, in order to guarantee that freedom, the State must ensure the equality of citizens before the law, specifically by granting financial means in a non-discriminatory manner.

16. This is also specified in paragraph 9 of the European Parliament resolution on freedom of education in the European Community (14 March 1984): "The right to freedom of education implies the obligation for member States to render possible, financially as well, the practical exercise of this right and *to grant [private] schools the public subsidies necessary for the exercise of their task and for the fulfilment of their obligations under conditions equal to those enjoyed by the corresponding public schools*, without any discrimination against the organizers, parents, pupils and staff".

17. We deem it essential that the human rights bodies should adopt an entirely new approach to this question of freedom.

18. If we consider, for example, the situation of education in the third world countries, it is quite obvious that many States are unable to establish adequate structures to ensure basic education. This is due as much to financial constraints as to problems of competence. What often happens is that schools born of civil society initiatives take over from an inadequate State educational provision. For want of adequate funding, such initiatives may well collapse, thus worsening an already precarious educational situation. Furthermore, in these countries, there is a real potential for setting up grass-roots structures which could effectively dispense basic education if they were granted even modest financial assistance.

19. Freedom of education is also a prerequisite for the implementation of the legal provisions concerning indigenous peoples. International Labour Organization (ILO) Convention (No. 169) concerning indigenous and tribal peoples in independent countries clearly spells this out. In Part VI on education, article 27 stipulates the following: "Governments shall recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose". The general comment on article 13 does not go nearly as far as the provisions of Convention No. 169 in this respect.

20. Lastly, freedom of education and the appropriate funding which is closely linked to it, is also a prerequisite for the renewal of western educational systems. Key documents, like the report submitted by Mr. Jacques Delors to UNESCO under the title "Learning: The Treasure Within" and the "White Paper" on education produced by the European Commission, emphasized the need to renew educational policies by providing for greater diversification and making the education agents more aware of their responsibilities.

21. In conclusion, our Organization hopes that the revival of interest in the right to education will lead to genuinely novel interpretations of the many legal instruments which regard freedom of education as a basic right. We are sure that the Commission on Human Rights has the will to move forward along this innovative path. Our Organization is ready, as in the past, to make its contribution to this debate.

Notes

[1] E/CN 4/Sub 2/1998/10 and E/CN 4/Sub 2/1999/10

[2] E/CN 4/1999/49

[3] Faced with the challenge to articles 1 and 3 of the Guermeur Act, concerning on the one hand the specific character of the school as an institution and, on the other, the question of the financing of independent schools, the Constitutional Council took the view that the principle of freedom of education "Constitutes one of the fundamental principles recognized by the laws of the Republic, which were reaffirmed by the preamble to the 1946 Constitution and upon which the 1948 Constitution conferred constitutional validity" Further, the Constitutional Council, recalling the principle of free, secular public education, affirmed that the latter principle "could not preclude the existence of private education, nor the granting of State aid to such education under the conditions set out by law"

[4] Decision 77/1985 Freedom of education is "a projection of ideological and religious freedom and of the right to disseminate freely one's thoughts, ideas or opinions" (Seventh basic legal principle)

"The constitutional precept stating that 'the public authorities will assist education centres which meet the prerequisites laid down by law' cannot be interpreted in such a fashion as to mean that the possibility of granting such assistance or otherwise is an absolute prerogative of the legislator" (II 11)